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TO RUEHC/SECSTATE WASHDC 3635

RUEHCI/AMCONSUL KOLKATA 2836

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RHEBAAA/DEPT OF ENERGY WASHDC

RUCPDC/NOAA NMFS WASHINGTON DC

RUEAUSA/DEPT OF HHS WASHDC

RUEHRC/DEPT OF AGRICULTURE WASHDC

RUEPH/CDC ATLANTA GA

RUCPDOC/DEPT OF COMMERCE WASHDC

RUEAIIA/CIA WASHDC

RHEFDIA/DIA WASHDC

RHEHNSC/NSC WASHDC

RHEHAAA/WHITE HOUSE WASHDC

RUEHZN/ENVIRONMENT SCIENCE AND TECHNOLOGY COLLECTIVE

UNCLAS SECTION 01 OF 04 NEW DELHI 002622

STATE FOR OES/PCI, OES/STC, OES/SAT, OES/EGC, AND SCA/INS

STATE FOR STAS

STATE PASS TO NSF FOR INTERNATIONAL PROGRAMS

HHS PASS TO NIH

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STATE FOR SCA, OES (STAS FEDOROFF), OES/PCI STEWART; OES/IHB MURPHY

PASS TO HHS/OGHA (STEIGER/ABDOO/VALDEZ), CDC (BLOUNT/FARRELL),

NIH/FIC (GLASS/MAMPILLY/HANDLEY), FDA (LUMPKIN/WELSCH, GENEVA FOR
HOFMAN)

PASS TO MAS/DAS/JESTRADA

PASS TO MAC/DAS/HVINEYARD

SIPDIS

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TSPL, TRGY, TNGD, EIND, ENRG, KGHG, IN

SUBJECT: INDIA'S SUPREME COURT APPROVES GO AHEAD FOR SMOKING BAN IN
PUBLIC PLACES FROM OCTOBER 2

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¶1. (U) SUMMARY: India's Supreme Court on September 29, 2008 refused to stay the Government of India notification to impose a ban on smoking in public places from October 2. With India's Supreme Court approval, the Center has got the go ahead to impose the Ministry of Health notification of 30 May for Prohibition of Smoking in Public Places Rules, 2008. This cable outlines notification details, the challenges and bridges crossed, international collaborating partners in this effort including HHS/CDC, and the Herculean task of making sure that the Rules are implemented and punishing those who violate in a country of a billion people. END SUMMARY.

Notification of "Ban on Smoking in Public Places"

¶2. (U) Government of India's (GOI) Ministry of Health and Family Welfare Department of Family Welfare has notified on 30 May the Prohibition of Smoking in Public Places Rules, 2008. These are notified to come into force on 2 October 2008. The public places defined in Section 3(1) of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (34 of 2003) includes workplaces, shopping malls and cinema halls. Workplaces include ban on smoking in private offices.

¶3. (U) The Supreme Court (SC) on 29 May 2008 quashed petitions in the Delhi High Court by passing the order "We are of the view that it is not a fit case for grant of interim relief. The prayer staying implementation of prohibition of smoking in public places is rejected... Let transfer cases be heard on November 18." The SC

clarified that "no court in the country shall pass any order in derogation of this order." The GOI rushed to the SC on 26 September seeking transfer of all petitions from the High Courts (HC) to the apex court for a uniform adjudication. The GOI plea included challenge to the ban on smoking in private offices pending before the HC's.

Private Sector Up in Arms - Challenge the Rules

¶4. (U) Petitions before the HC's include those by the tobacco manufacturer ITC Ltd, and another by the Indian Hotel Association. The petitioners moving separate pleas challenging the 30 May Rules opposed the notification saying such a ban on smoking at workplace was unjustified as it would include private offices.

¶5. (U) The Hotel industry is also angered by the notification as they felt they were complying with the earlier rules that made it mandatory for the hotels having a seating capacity of 30 or more to have a separate smoking zone. The industry has pointed out that the present rules amount to "Inspector Raj." [Note: During India's pre-financial reform era of the pre-1990's businesses were bound by several rules and regulations, including obtaining licenses that hampered ability to function and stalled progress. End Note.]

¶6. (U) According to the 30 May Rules a designated "smoking area or space" is defined as a physically separated and surrounded by high walls on all four sides, has an entrance with an automatically closing door normally kept in close position, has an air flow system, and has negative air pressure in comparison with the remainder of the building. This designated space is defined to be used only for "the purpose of smoking and no other service (s) shall be allowed."

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¶7. (U) The notification defines that the smoking area or space be used only for the purpose of smoking and that at its entrance or exits no other service shall be allowed. The ban will also include shopping malls, cinema halls, airports, hotels and restaurants, hospitals, educational institutions, and railway stations. A public place will include "open space surrounding such public places."

HHS/CDC Partners India in Tobacco Control

¶8. (U) For India from a public health viewpoint, tobacco is the most common preventable cause of death. The National Family Health Survey-3 of 2005-06 observed that 57 percent men and 10.9 percent women consume tobacco in some form. The Global Youth Tobacco Survey, 2006 indicates a decrease in the onset age of tobacco consumption to 13-15 years.

¶9. (U) HHS/CDC provides technical and financial support to India's Ministry of Health for the preparation of the Report on Tobacco Control, including preparation for the report in 2008 in collaboration with the World Health Organization (WHO). The objective of this report is to collate the evidence-based information on tobacco use in India, complemented with an analysis of the current situation, and recommend proposals for future strategies for effective control.

¶10. (U) HHS/CDC contributed towards the development of the "Bidi and Public Health" monograph" released by the Ministry of Health on 12 May 2008. The Report on Tobacco Control of India, 2004 stated about 1 million people die due to tobacco consumption each year with 50 percent of all cancer deaths in India due to tobacco consumption. Also, "bidi", the poor man's smoke is killing 600,000 people each year. India produces 700 billion bidis annually, almost all of them consumed locally. According to the bidi monograph, for every cigarette, eight bidis are sold in India, and nearly 2.3 percent of children aged 13-15 years are addicted to it. The monograph reports that India is home to 100 million bidi smokers. Health Secretary Naresh Dayal said bidi cultivation occupied 35 percent of the area under tobacco cultivation. Indian States of West Bengal, Bihar, Orissa, Tamil Nadu, Karnataka and Andhra Pradesh are epicenters of

bidi rolling while Gujarat and Maharashtra are major suppliers of bidi tobacco leaves.

¶11. (U) The global community negotiated the health treaty in 2004, the WHO Framework Convention on Tobacco Control (FCTC). India is a signatory to the FCTC treaty and ratified this in February 2005.

Bloomberg Initiative to Reduce Tobacco Use

¶12. (U) Michael Bloomberg has provided the CDC Foundation a grant of USD 125 million to create a partnership to reduce tobacco use to establish systematic surveys to monitor global tobacco use among adults. HHS/CDC is the implementing agency of this initiative. As part of this activity, the two-year grant to the CDC Foundation will support the WHO and HHS/CDC efforts to design a standard survey protocol to collect data on tobacco use in low- and middle-income countries with the highest smoking rates and to track countries' progress in implementing tobacco-free programs. In addition to the CDC Foundation, other key partners in the initiative include the Campaign for Tobacco-Free Kids, the World Lung Foundation, the Johns Hopkins Bloomberg School of Public Health and the WHO.

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Implementing the Ban on Smoking - A Herculean Task

¶13. (U) The notification stipulates that the person in charge of management of the property will ensure the rules are complied with and is liable to pay the fine. Under the rules, those violating the smoking ban will be fined from Rupees 200 or USD 4.4 (at exchange rate of USD 1 = Rupees 45). Health Minister Dr. Anbumani Ramadoss said that with smoking in public places a punishable offence from 2 October "We are going by the old fine of Rupees 200. But we want to increase the fine to Rupees 1,000 (USD 22.2) per person per offence and Rupees 5,000 (USD 111.1) for institutions. A decision on this might be taken in the future." Ramadoss was speaking on 9 September at the inauguration of the National Advocacy Workshop on Tobacco Control Laws and related issues in New Delhi. The Health Ministry will organize five regional workshops to raise level of awareness as diverse stakeholders need to be sensitized for tobacco control. Ramadoss said "After 2 October, the only places you can smoke are the roads and your home, if your family will allow it."

¶14. (U) The GOI is well aware that tobacco control is multi-dimensional and inter-sectoral and requires actions on all fronts. These include enforcement of anti-tobacco Acts, with several authorized officers eligible to take action on violations according to the Rules, prohibition of direct and indirect advertisements, prohibition in sale of tobacco products within 100 yards of educational institutions to minors (